

## COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

1570 Grant Street, Denver, CO 80203-1818 • (303) 866-2993 • (303) 866-4411 Fax John W. Hickenlooper, Governor • Susan E. Birch MBA, BSN, RN, Executive Director

June 3, 2011

John Pilotte, Acting Director
Performance Based Payment Policy Staff
Center for Medicare
Centers for Medicare & Medicaid Services
Department of Health and Human Services,
Attention: CMS-2480-NC
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: CMS-1345-P Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations

Dear Mr. Pilotte:

I am writing to you on behalf of Colorado's single state Medicaid agency, the Department of Health Care Policy and Financing to provide comment related to CMS-1345 P *Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations* under Section 3022 of the Affordable Care Act (ACA) of 2010.

As we communicated in our December 3, 2010 response to the CMS Information Request regarding the Medicare Shared Savings program, Colorado is implementing an accountable care collaborative (ACC) initiative on a statewide basis, although with a 60,000 beneficiary limit to allow piloting of the model. The initial plan calls for exclusion of persons who are dually eligible for both Medicare and Medicaid but Colorado is acutely aware that policies defined for a Medicare Accountable Care Organization (ACO) could have farreaching implications for States and providers interested in using any modification of the ACO model to serve Medicaid and dual eligible clients in the future. As Colorado is one of fifteen states selected for receipt of a federal design contract to integrate care for dual eligible individuals and our plan is to build upon our existing accountable care collaborative model, differences between the Medicare ACO model and our approach is of particular importance.

We recognize the considerable differences in population focus and anticipated capacity for demonstrations in the federal Medicare program, particularly when compared to State realities in population density and provider sophistication. Accordingly, Colorado's primary concern is that Medicare ACO eligible provider definitions and requirements do <u>not</u> inhibit CMS' ability to approve State Medicaid programs' proposed models for accountable care that would not be able to meet those definitions and requirements. Colorado asks that CMS reassure States of its continued willingness to allow States to test models most likely to meet state-specific

population needs. Please also clarify that CMS would not prohibit individual provider participation in both a Medicare Shared Savings Program ACO and another CMS' sponsored payment innovation program specifically for State Medicaid programs.

In addition to those overarching concerns, Colorado has specific comments on the proposed regulations as follows:

- § 425.5 Eligibility and governance requirements. Colorado believes that many components of these proposed requirements are unnecessarily repetitive of existing legal requirements, such as complying with federal criminal law, or are so prescriptive as to inhibit participation in the Medicare Shared Savings Program.
- § 425.5(c)(2) Eligibility and governance requirements. Reporting of TINs. Colorado believes that requiring each ACO participant to make a 3-year commitment for ACO participation will result in limited participation in the Medicare Shared Savings Program, especially for ACO participants in rural areas. Colorado strongly suggests limiting the 3-year commitment to the ACO entity, and eliminating the requirement that extends the 3-year commitment to individual ACO participants.
- §425.5 (d)(4) Eligibility and governance requirements. *Marketing materials*. Colorado believes prior approval by CMS of "marketing materials" that are provided to beneficiaries prior to their retroactive assignment to an ACO is unnecessarily burdensome, will likely cause delays in timely communications with beneficiaries, and has an unclear value.
- §425.5 (d)(5) Eligibility and governance requirements. *Notice of ACO participation*. Colorado believes providing such notice to beneficiaries prior to their retroactive assignment to an ACO is likely to create confusion when there is no action required from the beneficiary, such as an "enrollment decision," and there exists the potential for an individual beneficiary to receive such notice related to more than one ACO if the beneficiary has historically received care from multiple sources.
- §425.5 (d)(9) Eligibility and governance requirements. Leadership and management. Please clarify the standard against which CMS will review a proposed management structure to determine whether the structure will further the goals of the Medicare Shared Savings Program.
- §425.5 (d)(13) Eligibility and governance requirements. Sufficient number of primary care providers and beneficiaries. Based on Colorado's experience, a minimum of 5,000 beneficiaries/covered lives is an insufficient number for which a legal entity would deem the return on investment in infrastructure worthy when measured against the potential savings share.
- §425.7 Payment and treatment of savings. Colorado believes that the proposed options for shared savings will be insufficient to foster any significant interest in participation. The savings' thresholds, in conjunction with the required share in losses, a large number of quality measures, and the significant implied investment in infrastructure appear to offer little return on investment. Colorado strongly suggests that CMS consider either eliminating loss sharing altogether or defer loss sharing to subsequent contracting cycles.
- §425.9 Measures to assess the quality of care furnished by an ACO. Colorado strongly suggests that CMS reconsider the number of required quality measures or allow for a phasing-in of quality measures over time. Based on our experience, the expectation that all measures will be reported on after the first year is unrealistic.

§425.14(c) Termination, suspension, and repayment of Shared Savings. Forfeiture of mandatory withholding after termination. Colorado notes this provision as currently stated will likely inhibit potential ACO interest. At minimum, Colorado strongly suggests that CMS revise the proposed language to remove applicability of the forfeiture provisions to withhold amounts from prior periods in the 3-year cycle.

§ 425.15 Reconsideration review process. Colorado notes that the lack of an appeals right for the program aspects listed is not reflective of mainstream contracting practices.

§425.24 Overlap with other CMS Shared Savings Initiatives. Please clarify that the prohibition for Medicare providers and suppliers against concurrent participation in the Medicare Shared Savings Program and other Medicare initiatives involving shared savings does not apply to participation in Medicaid program innovations authorized through the Affordable Care Act.

Thank you for the opportunity to provide comment on concerns and considerations to enhance the Accountable Care Organization model's utility for vulnerable populations, including those individuals eligible for both Medicare and Medicaid. Should you have any questions, I can be reached at <u>Barbara.prehmus@state.co.us</u> or via telephone at (303) 866-2991.

Sincerely,

Cc:

Barbara B. Prehmus, M.P.H. Federal Policy & Rules Officer

Ms. Susan E. Birch, MBA, BSN, RN, Executive Director

Ms. Lorez Meinhold, Deputy Policy Director, Governor's Office of Policy and Initiatives,

Colorado Governor John W. Hickenlooper

Ms. Cynthia Mann, Center for Medicaid, CHIP, Survey & Certification

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